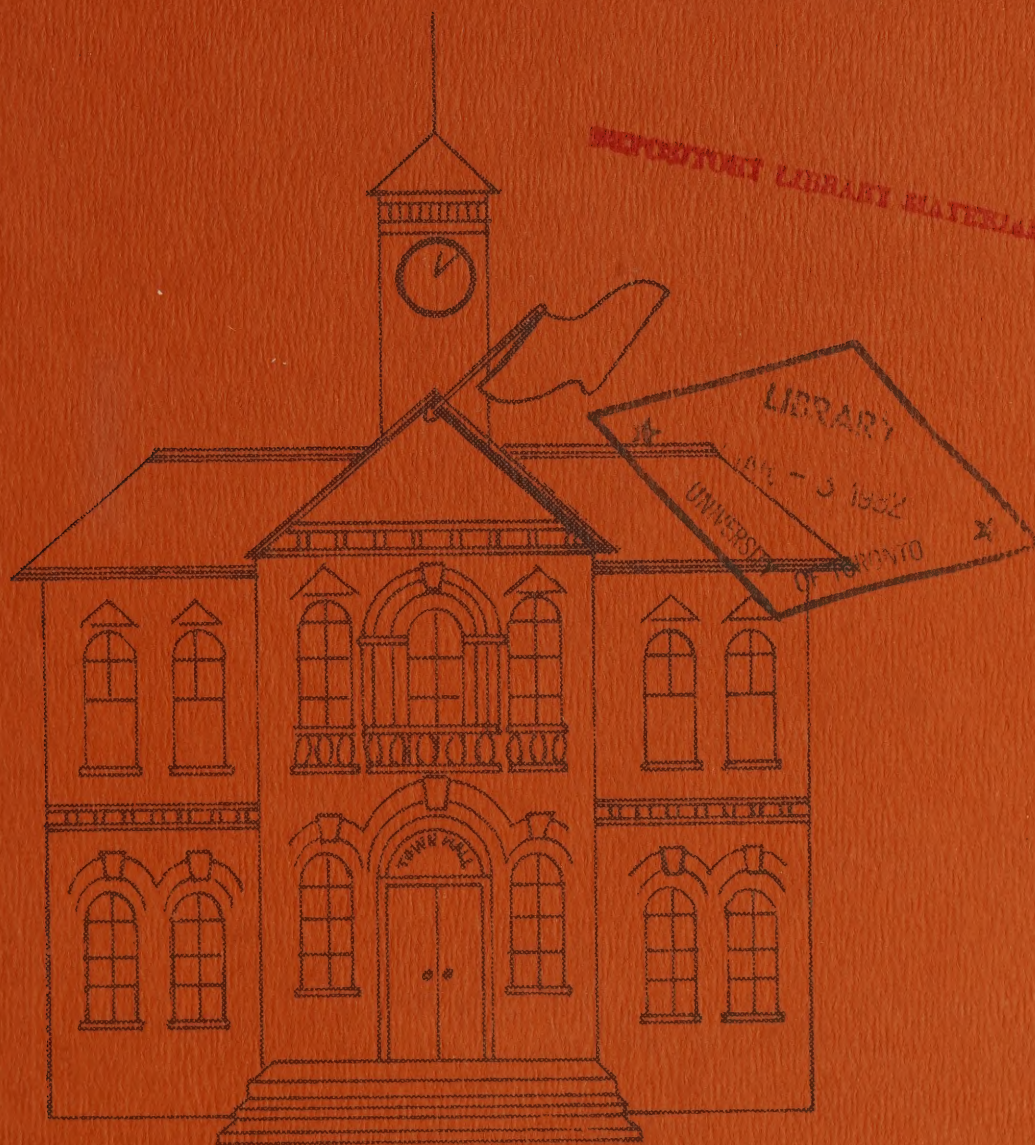


BULLETIN 47

BY-LAW ENFORCEMENT — **An Administrative View**

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Ontario

Ministry of
Municipal Affairs
and Housing

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
INTRODUCTION	1
COUNCIL POLICY ON ENFORCEMENT	2
ECONOMICS	7
PERSONNEL	8
PROCESS	10
PROCEDURE	11
GENERAL	13



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INTRODUCTION

This bulletin looks at setting up a municipal by-law-enforcement function.

It will be of interest, mainly, to municipal councils and senior administrative staff who are considering hiring municipal law-enforcement officers. (This term appears to be preferred over "by-law enforcement officers".)

Its chief purpose is to provide an overview of those matters leading up to the creation of the municipal law-enforcement operation. These include: authority to appoint personnel, enforcement policy, cost, type of personnel, and method of operation.

COUNCIL POLICY ON ENFORCEMENT

Before establishing a municipal law-enforcement operation, council should really have a policy covering the enforcement of by-laws. Ideally, this policy would be written for and formally adopted by council. It may be in the form of a staff report adopted by resolution of council or it could be contained in the actual by-law appointing the law-enforcement personnel.

One problem with the second approach is that the policy can needlessly become the centre of debate when appointments are made to replace law-enforcement personnel who are leaving. Generally, then, it is more practical to separate the policy and the appointment functions.

In establishing that policy, council should consider how vigorously it wants to prosecute offenders. Overzealousness here can lead to as many ratepayer complaints as perfunctory enforcement, or no enforcement at all.

The statement of enforcement policy must be a clear, concise direction from council to staff. It should not be confused with the operating procedures that will be developed by staff to implement the policy later on.

Such statement may be as simple as:

"The council shall provide the resources to investigate complaints and prosecute infractions of the by-laws of the municipality."

Municipalities typically go through three stages of by-law enforcement. These could be called:

1. Actions initiated by citizens.
2. Actions initiated by citizens and police.
3. Actions initiated by citizens and municipal law-enforcement personnel.

Actions by citizens. Most municipalities enact by-laws in response to requests from ratepayers to control a particular problem. The council does not really expect municipal staff to enforce the by-law actively. In fact, it usually does not provide any funds or personnel to do so.

Budgetary considerations aside, there is no legal obligation to enforce by-laws that the municipality has chosen to pass under permissive legislation, as opposed to those that, by legislation, it is required to pass.

Still, council clearly should be capable of enforcing a by-law if a specific infraction warrants. The number of these infractions will be greatly reduced if the public is aware that council will, if it has to, retain a solicitor and other personnel to prosecute an offence, even though the municipality does not maintain a full-time enforcement staff.

This way, would be offenders will not assume that council cannot enforce its by-law. They will know it means business.

The existence of a valid by-law provides a means for the ratepayer himself to take legal action. If he (or she) wants a by-law enforced, he may bring the alleged offender before the courts.

To do this, the ratepayer appears before a justice of the peace or a provincial judge and "lays an information". (An "information" is a document setting out the particulars of the offence.) If the justice is satisfied, he issues a summons compelling the defendant to appear in court to answer the charge.

The summons must be served on the defendant in accordance with the procedures set out in The Provincial Offences Act.¹ Basically, this is done by having a provincial-offences officer (All police officers are provincial-offences officers) deliver it.

Here it is up to the complainant to act as the prosecutor in court. He may do this by acting for himself or by hiring a solicitor to represent him in court and act as the prosecutor on his behalf.

Before a complainant takes this course of action, though, he would be well advised to contact the local crown attorney, or a provincial government employee who prosecutes provincial statutory offences. If the prosecution of the case is seen to have substantial public benefit, then they may decide to prosecute it and so save the complainant a lot of time and expense.

For taxpayers, collectively, private prosecution represents the lowest possible expenditure of public funds. It offers a quite satisfactory level of service for smaller communities where the mere existence of a by-law is usually sufficient to ensure that most residents will comply with it.

¹ For a more detailed discussion of The Provincial Offences Act, refer to Bulletin 44 of this series.

Actions by citizens and police. Unfortunately, as municipalities grow and urbanize, the old community ties tend to weaken and by-laws are broken more often. While citizens can still commence their own proceedings (as indeed they can even in the most urbanized communities with large enforcement staffs) the council will start getting more complaints from residents who feel that they should not have to bear the expense of enforcing these by-laws.

The typical response to this kind of pressure is to transfer it to the local police force. Council will ask the chief of police to respond to citizen complaints on by-law infractions.

Section 57 of The Police Act states:

- 57 "The members of police forces appointed under Part II, except assistants and civilian employees, are charged with the duty of preserving the peace, preventing robberies and other crimes and offences, including offences against the by-laws of the municipality, and apprehending offenders, and commencing proceedings before the proper tribunal, and prosecuting and aiding in the prosecuting of offenders, and have generally all the powers and privileges and are liable to all the duties and responsibilities that belong to constables.**
(Emphasis added)

For busy police forces, this may not always be a satisfactory use of skilled officers, particularly if they are being used to settle such things as zoning infractions. In fact, a common complaint from many municipalities is that, except for parking, enforcement of municipal by-laws rates a low priority among police. Even though it is clearly stated in The Police Act that the police are required to enforce municipal by-laws, some councils are not happy with the service they get.

Actions by citizens and enforcement personnel. Partly because of this, and because there are obvious economic advantages to using less highly skilled people, many councils decide to hire their own by-law enforcement personnel, and so move into the third stage of by-law enforcement.

This action also assures council of an effective liaison with, and control of, the by-law enforcement operation.

As far as the municipal council is concerned, the whole area of by-law enforcement is contentious and it represents a long running potential for conflict with the electors. As noted earlier, councils tend to want to strike some kind of balance between the extremes of non-enforcement and absolute enforcement.

One interesting fact to keep in mind when establishing this function and selecting personnel is that 95 per cent of all complaints are settled out of court. This is done through negotiations among the enforcement officer, the complainant and the alleged offender.

At the risk of being repetitious, then, once a council decides to establish an active by-law enforcement function, it must decide what strategy will govern this function: should the municipal law-enforcement personnel act only upon complaint, or should the enforcement personnel actively look for infractions to prosecute?

Most often, a balance is sought here. For example, by-law enforcement personnel may be used to patrol an area for parking offences. But it is unlikely they would patrol looking for zoning by-law infractions, too. It is a question not only of time and money but of whether council wants charges laid in cases where infractions may exist but where residents are not complaining about them.

Obviously, the least expensive and least disruptive route for both council and ratepayers is to act on complaints only. Perhaps that is why so many municipalities with by-law enforcement personnel choose this approach.

While a complaints-only strategy may be more effective, it inevitably presents its own problems. The nature of some by-laws, for example, is such that a complainant must be a witness to an offence. But, some people may not want to appear in court to testify against a neighbour. This certainly reduces the number of complaints that can be acted upon by enforcement personnel, but it can also displease some ratepayers who feel that by-laws should be enforced without their involvement.

A common instance of this is infractions of noise by-laws. Most courts want to hear testimony from the complainant directly, because what may seem unlawfully noisy to a neighbour at, say one o'clock in the morning might not strike an enforcement officer the same way during his regular working hours. (In fact, that same officer might not, in conscience, be able to say even during the night that the noise is offensive and in contravention of the by-law.)

This kind of problem obviously does not endear municipal councils and staff to ratepayers, yet it has to be expected in those no-win situations where ratepayers want by-laws enforced but do not want to ruin relations with a neighbour.

This is where good public relations is necessary, and here the negotiating skills of the municipal law-enforcement officer can be invaluable. If the officer can get the offender to "clean up his act" -- even though it is doubtful he could obtain a conviction without the participation of the complainant -- he has managed to resolve the problem without jeopardizing neighbourly good will.

ECONOMICS

Before a council sets out to establish a by-law enforcement operation, it should take a careful look at the costs involved.

Apart from the obvious expense of a law-enforcement officer's salary, clerical assistance may be necessary. Some of this expense can be reduced using part-time staff.

Also, it will be necessary to either provide a vehicle for the job or pay an allowance for use of a personal vehicle. There is a good deal of driving involved here and, if the officer is required to use his own vehicle, he may insist on a set monthly amount as well as the customary mileage rate. These days, "mileage" rates run between 15 and 23 cents per kilometer.

Another item that goes with this territory is an "instant-picture" camera to record evidence for court.

On the revenue side of the operation are the fines collected. As noted earlier, only 5 per cent of complaints result in trials and, presumably, fines upon conviction. So the amount collected will be small. However, parking infractions usually result in sizeable revenues from out-of-court payments.

Interestingly, some municipalities get additional revenues by providing by-law enforcement services to neighbouring municipalities. The municipal law-enforcement officer is appointed by each council to act on its behalf, but is an employee of only one municipality. The other municipalities pay for the service according to the terms of their agreement with the employer- municipality. This can be done on either a fee-per complaint or fee-per-time basis.

Some municipalities combine the duties of their by-law enforcement staff with certain other responsibilities such as licensing, building inspection, and even elections.

PERSONNEL

The Police Act provides:

- 70 "The council of any municipality or the trustees of any police village may appoint one or more municipal law-enforcement officers who shall be peace officers for the purpose of enforcing the by-laws of the municipality or police village."

This legislation is council's authority to appoint a law-enforcement officer. Such appointment must be in the form of a by-law. A list of the specific by-laws that are to be enforced and any other duties should be set out in a separate by-law.

Council should decide whether the by-law enforcement function is to be full time or part time. If it is to be only part time, it may be difficult to hire someone skilled enough to handle the demands of the job. One municipality's solution here was to hire a retired police officer. Police officers retire at age 60 and may want to work two or three days a week after retirement.

Since most (about 95 per cent) of the complaints received do not reach court, the bulk of an enforcement officer's time is spent issuing warnings and trying to persuade offenders to change their ways. Such work, if improperly handled, can cause embarrassment for the municipality, particularly members of council. If the person hired turns out to be tactless or too aggressive (or both), it will not be long before council members are receiving phone calls from their various constituents.

One complaint heard from municipal law-enforcement officers is that there was no clear indication of the scope of their position when they were hired. A written job description and enforcement policy should be available to every candidate for this position.

This can save a lot of grief. No one appreciates accepting a job that he thinks is for a full-fledged municipal law-enforcement officer, only to find out that he is also a dog-catcher and part-time fill-in for various other departments.

While it is certainly desirable to hire a qualified person for any position, it is just as undesirable to hire someone who is over-qualified, someone who will quickly become disillusioned and resign, leaving the municipality with the added expense of having to hire a replacement.

At any rate, it will not be easy for a council to definitively prescribe the duties of the municipal law-municipal enforcement officer when it first sets up this operation. Taking first things first, it may be easier at the outset to prepare only the enforcement policy and the budget for the function, then clearly inform the job candidates that this is a new venture and that they are expected to help develop the function by making recommendations to council as they go along.

Here, of course, is where hiring an experienced person would be most helpful. In a developing situation, someone with an enforcement background will be much more able to assess the needs of the municipality and make expert recommendations than someone who must learn the work from scratch.

PROCESS

Every municipal council considering the step, will want to know some of the basic benefits of a by-law enforcement operation.

The first benefit to council would be in having a catalogue of all the by-laws that are to be enforced. This may simply be a loose-leaf binder with a listing of the various by-laws plus a certified copy of each, but it will let staff determine if the subject of a complaint is covered by local legislation and whether the specific activity contravenes the by-law. While the catalogue will be used extensively by the enforcement officer, it also helps clerical staff to answer basic questions when he is out of the office.

Such a catalogue tends to point up gaps and potential control problems that council can deal with before they develop.

It also makes it easier for a new employee to be trained in the event the incumbent leaves.

Once the operation is in place, a particular asset that is often overlooked is the expert advice that can be offered by enforcement personnel before a by-law is passed. Who will ever know how many by-laws have been enacted throughout the province that could not be practically enforced? Today, it should be routine that any by-law that will require active enforcement be circulated for comment to the municipal law-enforcement officer. This could at least minimize those embarrassments to council when complaints come in about infractions, and it is then found that the by-law was unenforceable to begin with.

Appearances can be deceiving, and a particular control by-law, without the benefit of expert appraisal, may seem eminently practical -- yet require more staff resources to actually enforce than council anticipates. It is better to know this beforehand than to have to face the situation at the next annual budget meeting where council must either approve additional staff, let the by-law go unenforced or, worse still, spread staff so thinly that none of the by-laws gets proper attention.

Establishing a by-law enforcement operation within the municipal staff structure should also provide for a systematic and unbiased approach to handling complaints. This will relieve some of the pressure on council to arbitrate disputes, leaving it more time for other matters of public business.

PROCEDURE

To help council and senior staff assess municipal law-enforcement candidates, it may be useful here to take a brief look at the procedure that such personnel generally follow.

When a complaint comes in, an occurrence sheet is filled out. (See Appendix for sample.) This is usually followed by a site inspection. Here the diplomatic skills of the enforcement officer are tested. If the offence can be brought to the attention of the offender and resolved then and there, the officer will have saved the municipality time and money and possibly avoided embarrassment for the complainant.

In some cases, the offender will neither be available nor co-operative. The municipal officer may then want to take photographic evidence of the offence and send a polite letter to the offender. Again, how this is written will test the tact and judgment of the officer.

The letter should indicate the number of the by-law allegedly being contravened, a copy of that section of the by-law, and should include a request (not a demand) that the situation be rectified before a specific date. Most such enforcement policies also give staff some authority to grant extensions to the time limit if the offender is genuinely attempting to correct the problem.

A reminder in this first letter that such relief may be available will show that the officer is not being arbitrary but is merely trying to settle the matter amicably. No one wins if the offender gets upset and forces the issue into a prolonged court battle.

Another approach here is for the enforcement officer to set out in the first letter what he figures is a reasonable time period for correcting the problem, and not refer at this point to a time extension. This may persuade the offender to do his best to meet the deadline, and to contact the officer only when he is unable to comply.

If the offender does not follow through, most enforcement policies provide for a second visit and, if possible, a talk with the offender. This is followed by a second letter demanding compliance before a specified date. Failure to comply would lead to formal prosecution.

(The court process is not discussed in this bulletin but is the subject of Bulletin 44 in this series dealing with The Provincial Offences Act.)

Obviously, it helps no one to prolong the resolution of a complaint with many letters -- except perhaps the unscrupulous offender who will try to drag out the process as long as possible.

Record keeping. Keeping proper records of an occurrence is very important. There are four main benefits.

First, if the matter should arise before council later on, staff can easily prepare an accurate report of complainant's history. This detailed record-keeping could resolve any conflict between statements made to council by the complainant and by the offender.

Second, record-keeping ensures proper staff follow-up. It also avoids ill feelings caused when a complainant must call again to jog someone's memory.

Third, these records allow the law-enforcement officer to review a case and refresh his memory before going to court. The court appearance may well be a year after the first occurrence. When the officer is giving evidence, his credibility will be assisted by the clarity and detail of his evidence.

Fourth, these records can form the basis for monthly statistical reports and annual state-of-the-department reports to council. These will help bring potential problems to council's attention early on, and even show areas where new by-laws or by-law amendments are needed.

GENERAL

There are a number of associations dealing with matters of common interest to municipal law-enforcement officers, including the recently formed Municipal By-law Enforcement Officers Association, Ontario. Membership in these offers a useful sharing of information that can improve the efficiency of by-law enforcement in individual communities. For the municipality, this more than makes up for the cost of membership.

APPENDIX

OCC.# _____

TOWNSHIP OF _____BY - LAW OCCURRENCE

DATE _____ TIME _____

NAME OF COMPLAINANT _____

ADDRESS OF COMPLAINANT _____ TEL. _____

NATURE OF COMPLAINT

DETAILS

ACTION TAKEN

FOLLOW UP REQUIRED _____ YES

_____ NO

BY-LAW OFFICER

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